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Nos. 86-622 and 86-737

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

EUGENE TRAYNOR,

Petitioner,

v.

THOMAS K. TURNAGE, ADMINISTRATOR OF VETERANS' AFFAIRS, and VETERANS' ADMINISTRATION,

Respondents.

JAMES P. MCKELVEY,

Petitioner,

v.

THOMAS K. TURNAGE, ADMINISTRATOR OF VETERANS' AFFAIRS, and VETERANS' ADMINISTRATION,

Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Second Circuit and the District of Columbia Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Petitioners Eugene Traynor and James P. McKelvey submit this brief in reply to the arguments advanced by respondents. The government argues that 38 U.S.C. § 211(a) (1982) precludes the federal courts from considering whether the Veterans' Administration's "willful misconduct" regulation discriminates

against the handicapped in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1982). The United States also argues that even if § 211(a) does not bar review, the willful misconduct regulation is not discriminatory.

These arguments should be rejected, for the reasons set forth below and in petitioners' opening brief.

I. SECTION 211(a) DOES NOT PRECLUDE THE FEDERAL COURTS FROM DETERMINING WHETHER THE VETERANS' ADMINISTRATION'S WILLFUL MISCONDUCT REGULATION VIOLATES § 504 OF THE REHABILITATION ACT

A. Neither The Language Of § 211(a) Nor The Legislative History Supports The Government's Argument

1. The Language of § 211(a) Permits Review

The government asserts that the plain language of § 211(a) precludes judicial review of petitioners' challenge under the Rehabilitation Act to a Veterans' Administration ("VA") regulation of broad and binding application.[1] Res. Br. at 12-13. It relies for this conclusion upon a cursory reading of § 211(a).[2] In

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[1] The government repeatedly errs in characterizing petitioners' lawsuits as mere disputes about the VA's determination of individual benefit claims. In fact, petitioners are seeking review of the VA's failure—and, indeed, refusal—to comply with a federal statute, the applicability of which is undisputed.

[2] The government's reliance on Lindahl v. OPM, 470 U.S. 768 (1985), is misplaced. Res. Br. at 13. In *Lindahl*, the Court noted that "when Congress intends to bar judicial review altogether, it typically employs language far more unambiguous and comprehensive than" the language of the statute in question in *Lindahl*, citing § 211(a) as an example of a statute with a clearer bar to review. *Id.* at 779-780. At most, this citation stands for the proposition that § 211(a) is broader than the statute at issue

contrast, petitioners have explained how a full and fair reading of the statutory language permits review in these circumstances. See Pet. Br. at 34-37.

Section 211(a) provides that "decisions of the Administrator *on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans* . . . shall be final and conclusive." (Emphasis added.) Thus, review is barred only where a court would be required to substitute its own judgment for the VA's concerning questions of law or fact that arise under any law (1) administered by the VA that (2) provides benefits for veterans. Petitioners' lawsuits plainly are outside this bar.

First, as noted by Judge Kearse in her dissent in *Traynor*, the VA does not administer § 504 of the Rehabilitation Act. *See* Pet. Br. at 35 n.23.[3] Moreover, § 504 does not provide benefits to veterans—rather, it prohibits discriminatory treatment of the handicapped, including alcoholics, in all federal programs, not just those of the VA.[4]

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in *Lindahl*, and that § 211(a) bars review in certain circumstances. Petitioners have never claimed otherwise. The Court's decision in Johnson v. Robison, 415 U.S. 361 (1974), and four court of appeals decisions allowing review of non-constitutional challenges to VA determinations confirm that § 211(a) does not bar review in all circumstances. *See* Pet. Br. at 46 & n.31.

[3] The Justice Department administers the Rehabilitation Act pursuant to Executive Order No. 12,250, *reprinted in* 42 U.S.C. § 2000d-1 (1982).

[4] If the government's view of § 211(a) were accepted, § 211(a) would preclude review of any VA regulation, regardless of its inconsistency with federal laws of general applicability. For example, § 211(a) would bar courts from reviewing claims of mi-

The government contends, however, that many veterans claiming a "disability" under a veterans' benefits statute could also claim to be "handicapped" under the Rehabilitation Act. As a result, the government argues that a ruling in petitioners' favor would allow any veteran to avoid the effect of § 211(a) merely by including a Rehabilitation Act claim in his or her complaint. Res. Br. at 23-24.

This concern is frivolous. The Court noted in *Johnson v. Robison* that § 211(a) precludes review of decisions "made by the Administrator in the . . . application of a particular provision of the [veterans' benefits] statute to a particular set of facts." 415 U.S. at 367. If a complaint alleging violation of a non-VA statute actually questions only the VA's application of the laws and regulations it administers to a particular set of facts, a decision in favor of petitioners would not authorize judicial review. But where, as here, the challenge is to the VA's failure or refusal to comply with a statute of general applicability, thus raising a genuine issue under a statute not administered by the VA, review would and should be permitted. Once that legal challenge is resolved, it would be for the VA to apply the corrected policy on a case-by-case basis in light of the facts raised by each veteran's case.

2. The Available Evidence of Congressional Intent Supports Judicial Review

The government also contends that the legislative history of § 211(a) supports its argument that the courts cannot hear these cases. Yet the "legislative history" cited by the government, principally a reci-

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ample, § 211(a) would bar courts from reviewing claims of minority veterans that VA regulations violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1982).

tation of the language of § 211(a) in its various iterations, is unilluminating. The language of the statute has changed over the years, but it has never supported the government's sweeping assertion that Congress intended to bar review even of "questions arising under other statutes [than those administered by the VA]." Res. Br. at 14. Bars to judicial review are disfavored. *See, e.g., Bowen v. Michigan Academy of Family Physicians*, 106 S.Ct. 2133, 2135-36 (1986). Accordingly, if the government's position were correct, one would find support in the history of § 211(a) for the proposition that VA regulations are not subject to review to determine whether they violate laws of general applicability.[5]

Instead, what little legislative history exists supports judicial review. Pet. Br. at 39-45. The VA's own pronouncements have been particularly instructive. The VA Administrator told the Congress in 1984: "VA regulations should be, and are, reviewable in the

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[5] In Gott v. Walters, 756 F.2d 902, 908 (D.C. Cir.), *vacated and remanded with order to dismiss*, 791 F.2d 172 (D.C. Cir. 1985) (en banc), Judge Scalia noted that "the language [of 211(a)] dates back to . . . an era in which the adoption of principles governing adjudication *by rule* was rare (and thus unlikely to be specifically addressed in such a statute)." Given this, Congress could hardly have intended to preclude the review of regulations when it enacted § 211(a).

A recent commentator, arguing that review should be permitted in these cases, has noted that § 211(a) was enacted at a time when state-created benefits were viewed as mere "gratuities," not property rights. As such, veterans' benefits could be withdrawn without due process of law. *See* Reisch, "211 in Progress: Must the Veterans Administration Comply with Federal Law," 40 Stanford L. Rev. at 323, 324-25 (1987) (student author) (discussing scope of § 211(a) bar to review).

Federal courts." *See* Pet. Br. at 43. The government discounts this testimony as merely "snippets of subsequent legislative materials" that should be given no weight. Res. Br. at 18 n.8. However, the Court has repeatedly recognized that the view of the affected agency is a significant source for understanding Congressional intent.[6] *See, e.g., Bell v. New Jersey*, 461 U.S. 773, 787 (1983); *Andrus v. Shell Oil Co.*, 446 U.S. 657, 666 n.8, 667-672 (1980). This is particularly true here, where the agency told Congress that review of regulations was available, and Congress relied on the VA's statements in declining to amend § 211(a).[7] The VA's stated views to Congress should therefore be accorded significant weight in resolving these issues. *See* Pet. Br. at 43-45.

B. Judicial Review Furthers The Goals Of The Rehabilitation Act And Will Not Thwart The Objectives Of § 211(a)

1. Review Is Necessary To Ensure That The Requirements Of § 504 Are Honored

The underlying premise of the government's argument is that the VA is competent to review its own actions under the Rehabilitation Act and other

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[6] The government recognizes this point, for it argues that the VA Administrator's view concerning the legality of the willful misconduct regulation is entitled to "considerable deference." Res. Br. at 32. *See* note 16 *infra*.

[7] *See* Reisch, *supra*, 40 Stanford L. Rev. at 351 & nn.149-150. Despite its conciliatory statements to Congress that § 211(a) permits review of regulations, the VA has argued the jurisdictional issue inconsistently to the Courts of Appeals. *See* Pet. Br. at 9 and 12-13 (jurisdiction challenged in *Traynor* but initially conceded in *McKelvey*); Tinch v. Walters, 765 F.2d 599 (6th Cir. 1985) (jurisdiction not challenged).

generally-applicable federal statutes, and that § 211(a) withdraws from the federal courts the authority to determine whether a VA regulation violates such statutes. This is an astonishing argument in light of the facts of these cases.

In *Traynor*, the Board of Veterans Appeals explicitly declined to consider whether its decision on Mr. Traynor's request for benefits was proper in light of § 504 of the Rehabilitation Act. 791 F.2d at 233 (Traynor Cert. Pet. 35A-36A); *see* Pet. Br. at 32. In *McKelvey*, raising the Rehabilitation Act issue before the Board of Veterans Appeals would have been futile. As the government stated in its opening brief to the D.C. Circuit on Mr. McKelvey's appeal,

> "We are not pursuing the question of jurisdiction on this appeal, because we do not believe that 38 U.S.C. § 211(a) can be applied to the claim under the Rehabilitation Act . . .. We do not read 38 U.S.C. § 211(a) to preclude judicial review of a point that the Veterans Administration never considered and, under existing regulations, probably had no authority to consider."

See Pet. Br. at 32-33.

Thus, petitioners never had a hearing before the VA on the question of whether the willful misconduct regulation violates § 504 of the Rehabilitation Act. The Board of Veterans Appeals believed it had no authority to provide such a hearing, and until quite late in the *McKelvey* litigation, the United States concurred. Under these circumstances, divesting the courts of jurisdiction would exempt the VA from the

rule of law and leave petitioners without any forum to raise their civil rights claims.[8]

2. Judicial Review Will Not Impair The Uniformity Of VA Decisions

The government contends that reversal of the decisions below would foster inconsistency by allowing judicial review of policy interpretations announced by regulation but not those announced through adjudication. Res. Br. at 21-22. This contention has no merit. The VA develops very little policy by adjudication. VA regulations state explicitly that "[c]onclusions reached in individual cases . . . will not be followed as precedents." 38 C.F.R. § 3.101 (1986). Instead, VA benefits determinations are guided by regulations and policy manuals that reiterate and implement the requirements of those regulations. *See, e.g.*, VA Manual M21-1, § 14.04 (JA at 167). Thus, allowing review here produces a rational scheme for ensuring VA compliance with generally-applicable law.[9]

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[8] It is one thing to trust that an agency's case-by-case determinations will comply with agency rules, but it is quite another to give an agency unreviewable discretion to issue or maintain rules that are facially inconsistent with laws passed by Congress. The latter position—urged by the government here—undermines the rule of law by authorizing agencies to disregard with complete impunity their obligations under federal statutes.

[9] The government notes the First Circuit's apparent concern in Paluca v. Secretary of Labor, 813 F.2d 524 (1st Cir. 1987), that permitting review of generally-applicable regulations but not individual cases would produce an "absurd result" because the court could not ensure that its directive was followed in individual cases. *See* Res. Br. at 22 n.12. This is unpersuasive, and it fails to justify the abdication of the court's responsibility to

Equally meritless is the government's contention that allowing review of regulations would have the negative effect of encouraging the VA to avoid rule-making altogether. Res. Br. at 22. There has been no evidence of such a trend despite the fact that review has been available in several circuits for a number of years. Moreover, the incentives for the VA to continue to operate through regulations will remain strong despite the availability of judicial review in the narrow circumstances of these cases.[10]

3. Judicial Review Will Not Overburden the Courts

The government asserts, without justification, that a decision allowing review would overburden the courts with litigation. It supports this policy argument only by counting the number of pages of VA regulations in the Code of Federal Regulations. Res. Br. at 19-21. This concern is not only speculative, but also must be rejected on the basis of the VA's own

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ensure that general rules governing individual cases are legally correct.

[10] The government quotes from this Court's decision in Rose v. Rose, 107 S.Ct. 2029 (1987), to support its argument that permitting review would result in non-uniform VA decisions. In fact, *Rose* supports petitioners' argument. Rose held that § 211(a) did not divest a state court of jurisdiction in a contempt proceeding brought against a veteran charged with failing to make child support payments out of the proceeds of his VA disability benefits. The Court stated that the "interest in uniform administration of veterans' benefits focuses . . . on the technical interpretations of the statutes granting entitlements, particularly on the definitions and degrees of recognized disabilities and the application of the graduated benefit schedules." *Id.* at 2035. These cases ask the Court to consider the legality of a broad and binding regulation having nothing to do with technical VA determinations.

experience. Although challenges by veterans to VA regulations have been permitted for a number of years in four circuits, only a handful of cases have been brought. *See* Pet. Br. at 46 n.32. This is hardly an overwhelming burden for the courts, and a decision by the Court in petitioners' favor will not open the floodgates.[11]

II. THE WILLFUL MISCONDUCT REGULATION VIOLATES § 504 OF THE REHABILITATION ACT

A. Section 504 Of The Rehabilitation Act Prohibits Discrimination On The Basis Of Alcoholism

The government contends that, under petitioners' theory, "the dispositive issue in the case is whether alcoholism is a disease." Res. Br. at 26. This is simply incorrect. The dispositive issue is whether the VA may ignore Congress' determination that alcoholism is a handicap,[12] and its mandate that alcoholics must not be the victims of discrimination because of their handicap. Thus, the issue is not a medical one—whether alcoholism is a "disease"—but a legal one: may the VA ignore federal law and treat alcoholics in a manner prohibited by the Congress. The answer is obviously no, and a straightforward analysis under § 504 of the Rehabilitation Act demands the conclusion that the willful misconduct regulation is improperly discriminatory.

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[11] *See* Reisch, *supra*, 40 Stanford L. Rev. at 352-355.

[12] In addition to its determination that alcoholism is a handicap, Congress has also determined that "alcoholism is an illness requiring treatment and rehabilitation." Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, 42 U.S.C. § 4541(a)(8) (1982).

As the government concedes, alcoholism is a handicap for purposes of the Rehabilitation Act.[13] *See* Res. Br. at 33; *see also* Pet. Br. at 20-21. Accordingly, the Court must consider (1) whether petitioners are "otherwise qualified" for the program of benefits from which they have been excluded (the government does not dispute this); (2) whether petitioners have been excluded "solely" because of their handicap (the government admits that petitioners, and all veterans whose only disability is alcoholism, are barred from receiving delimiting date extensions solely because they are alcoholics); and (3) whether the program from which petitioners have been excluded is subject to § 504 (the government concedes this). Res. Br. at 36-37. In sum, the government has not challenged any element of petitioners' § 504 claims. Therefore petitioners must prevail.

B. Attempts To Justify The Willful Misconduct Regulation Are Neither Relevant Nor Persuasive

The government makes a number of unpersuasive arguments in an effort to justify its discriminatory regulation. Petitioners will briefly discuss the reasons why these arguments should be rejected.

1. The Willful Misconduct Regulation, Which Is Rooted In The Era Of Prohibition, Violates The Basic Mandate Of The Rehabilitation Act

The government argues that the VA's classification of alcoholism as willful misconduct is long-standing

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[13] The VA distinguishes primary alcoholism, which is not accompanied by an underlying psychiatric condition, from secondary alcoholism, which is, by denying delimiting date extensions only to primary alcoholics. Because the Rehabilitation Act recognizes all alcoholism, whether primary or secondary, as a handicap, petitioners need not address the VA's misuse of these distinctions. *See* note 16 *infra*.

and therefore entitled to deference. Res. Br. at 27-30. Petitioners concede that the "willful misconduct" regulation has a long history; indeed, the archaic attitude toward alcoholism that it reflects is precisely the problem. The regulation's conclusive classification of alcoholism as willful misconduct dates from the era of Prohibition, when little was known about the nature of alcoholism, and when alcoholism was considered merely immoral behavior and a sign of weakness.

With the passage of the Rehabilitation Act in 1973, Congress determined that persons with handicaps should not be discriminated against "because of the prejudiced attitudes or the ignorance of others." *School Board of Nassau County v. Arline*, 107 S.Ct. 1123, 1129 (1987). The central purpose of the Act is to ensure that decisions about handicapped individuals, including alcoholics, will be made not on the basis of stereotypes and conclusive presumptions—such as those reflected in the VA's "willful misconduct" regulation—but on the basis of a careful, individualized assessment of relevant information about each person's handicap and qualifications to participate in the program in question. As the Court noted in *Arline*, "[t]he Act is carefully structured to replace . . . reflexive reactions to actual or perceived handicaps with actions based on reasoned and medically sound judgments." *Id.* at 1129.

The willful misconduct regulation defeats this purpose by requiring that all decisions about veterans whose handicap is alcoholism be based on the conclusive presumption that alcoholism is caused by misconduct—a presumption that, as amici point out, flies in the face of current medical knowledge about the etiology and nature of this illness. The regulation bars

all veterans handicapped by alcoholism from making any showing that their handicap was not caused by misconduct, and thus preemptorily denies them extensions of time in which to use their educational benefits.

The government disingenuously asserts, however, that in amending 38 U.S.C. § 1662(a)(1) (1982) in 1977 to allow extensions of time in which to use educational benefits, Congress approved of the VA's long-standing interpretation of alcoholism as willful misconduct. Res. Br. at 30-31. Its only support for this conclusion is language from a Senate Committee report suggesting that, in determining whether a disability resulted from "willful misconduct," the "same standards [should] be applied as are utilized in determining eligibility for other VA programs."

There is no indication, however, that the Committee or the Congress considered the substance of the VA's regulations.[14] This is particularly significant here because in 1977, the time of the amendments on which the government relies, § 504 of the Rehabilitation Act *did not apply* to the VA educational benefits program. Section 504 only became applicable in 1978, when Congress first extended the proscription against discrimination to all federal agencies, without any indication that the VA educational benefits program

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[14] The government calls the issue of alcoholism "technical and complex," and suggests that the VA has expertise in the area. Res. Br. at 31. This "expertise" is not explained, and the record is utterly barren of any indication that the VA exercised any medical or other technical judgment in deciding that alcoholism is willful misconduct. Indeed, the effect of the willful misconduct regulation was to preclude the use of any such expertise on the part of the VA in these cases.

should be immune from the full impact of § 504. The government's suggestion that a brief reference in a Senate Committee report made when § 504 did not even apply mandates disparate treatment for a particular category of handicapped individuals is absurd.

2. Enforcing § 504 Will Not Repeal The Statute Permitting Extensions Of Delimiting Dates

The government suggests that reversal of the decisions below will impliedly repeal the statutory provision permitting extensions of time in which to use VA educational benefits. Res. Br. at 32-35. The government reaches this conclusion by acting as if the willful misconduct *regulation* is in fact synonymous with the delimiting date extension *statute*, and by attempting to create a conflict between two statutes when there is none. Res. Br. at 32. This effort must fail.

The willful misconduct regulation discriminates against alcoholics in violation of § 504 of the Rehabilitation Act. Judicial recognition of the regulation's unlawfulness would have absolutely no effect on the *statute* authorizing extensions only for veterans whose disabilities are not the result of willful misconduct. The VA would still be able to make individualized determinations of willful misconduct under the statute; it simply could not make blanket determinations that a handicapping condition such as alcoholism is *per se* willful misconduct.[15]

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[15] The D.C. Circuit in *McKelvey* suggested that the VA could create an irrebuttable presumption that alcoholism is "willful misconduct," stating that "[i]t is no discrimination . . . to establish for various disabilities the sorts of procedures that are distinctively appropriate." 792 F.2d at 203. But the willful mis-

The government suggests, however, that its regulation is merely a way of "making reasonable distinctions among types of handicaps." Res. Br. at 33. Thus, respondents argue that "even if one accepts the disease conception of alcoholism and considers only those veterans whose alcoholism is disabling, that would not necessarily preclude scrutiny of the veteran's conduct or his volition as a contributing cause of his disability." *Id.* This general statement has no conceivable relevance to the VA's classification of alcoholics. These cases demonstrate that the VA does not scrutinize an alcoholic veteran's conduct or volition. Instead, once a veteran is identified as an alcoholic, that ends the inquiry. Alcoholic—and thus—handicapped veterans are presumed conclusively to have engaged in willful misconduct, and are denied access to educational benefits because of their condition. This is nothing more than impermissible discrimination on the basis of handicap.[16]

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conduct regulation is substantive, not procedural, and determines conclusively that persons handicapped by alcoholism have engaged in willful misconduct, regardless of whether this presumption is factually incorrect in an individual case. This presumption, no matter how explained or rationalized, is discriminatory.

[16] The VA's attempt to rationalize the willful misconduct regulation must be rejected, for several reasons. First, "[i]t is an axiom of administrative law that an agency's explanation of the basis for its decision must include 'a 'rational connection between the facts found and the choice made.' ' " Bowen v. American Hospital Ass'n, 106 S.Ct. 2101, 2112 (1986). The briefs of amici demonstrate that the VA's classification is not medically sound, and therefore the regulation is irrational. Second, there is no reason to accord any deference to the VA's proffered rationale. In *Bowen* the Court noted that the views of most federal agencies with respect to § 504 are not "predicated on expertise,"

The government nevertheless contends that such discrimination is acceptable because of legislative events occurring after 1978, all of which reflect widespread dissatisfaction with the VA's position here and concern about whether that position was supported by law. In 1980, in deciding not to adopt a statutory provision that would have specifically overridden the VA's regulation in the circumstances raised by these cases, the Joint Explanatory Statement of the House and Senate Veterans Affairs Committees noted:

> By deleting the Senate provision [which would have made clear that delimiting date extensions were available to recovered alcoholics], the Committees are taking no position as to whether such a provision is necessary in order to authorize the VA to make favorable determinations regarding GI Bill delimiting date extensions based on disability in the cases of veterans or eligible persons who have recovered from alcohol or drug dependence or abuse disabilities.

Veterans Rehabilitation and Education Amendments of 1980, Joint Explanatory Statement, [1980] U.S. Code Cong. & Ad. News 4617, 4635. This statement is striking, for it indicates that the Committees believed that no revision of the statutory willful misconduct test was necessary to allow the VA to grant extensions to veterans handicapped by alcoholism.

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and thus not entitled to deference. 106 S.Ct. at 2120 n.30. Finally, § 504 demands not just a reasonable basis for discriminatory regulations, but a "*substantial* showing that [an agency's] regulations are justified." Traynor v. Walters, 606 F. Supp. 391, 400 (S.D.N.Y. 1985) (emphasis added); *see also* Brief Amicus Curiae of The National Council on Alcoholism at 43 n.23.

3. Enforcing § 504 Will Not Have Adverse Consequences For The Administration of VA Programs

The government states that "in assessing the reasonableness of the VA's interpretation of 'willful misconduct,' it is . . . necessary to consider the consequences of that interpretation" in the context not only of educational benefits extensions but also of disability pensions. Res. Br. at 40-41. This explicit invitation to consider policy issues properly left to Congress, even if it were proper, has no merit.

The government suggests that the availability of extensions would create an incentive for alcoholic veterans to continue drinking. This argument defies common sense. In any event, the amount of educational benefits is determined not by the level of disability but by the length of service. 38 U.S.C. § 1661(a) (1982). Continued drinking would have no effect on the amount of benefits.

The financial incentives may be different with respect to disability benefits, but that program, which is subject to a separate VA regulatory regime, is not at issue here. Moreover, the government's concern is misplaced, for if a veteran continued to drink in order to receive or enhance disability benefits, that might properly be classified as "willful misconduct" that would allow the denial of benefits. In any event, if a decision for petitioners were perceived to have an adverse impact on the disability benefit program, Congress could act to correct that impact, much as it limited the effect of § 504 of the Rehabilitation Act in the context of employment of active alcoholics and drug abusers. 29 U.S.C. § 706(8)(B) (1982).

CONCLUSION

For the reasons discussed in petitioners' opening brief and in this reply brief, the Court should reverse the decisions of the Second Circuit in *Traynor* and the D.C. Circuit in *McKelvey*, and invalidate the VA's willful misconduct regulation because it conflicts with § 504 of the Rehabilitation Act.

Respectfully submitted,

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